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# NOTICE OF ALLOWANCE AND FEE(S) DUE

24628 7590 11/30/2009

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| EXAMINER | |
|---|---|
| CHEN, STACY BROWN | |
| ART UNIT | PAPER NUMBER |
| 1648 | |

DATE MAILED: 11/30/2009

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 09/498,046 | 02/04/2000 | Sabine Neirynck | VIB-08 | 8244 |

TITLE OF INVENTION: IMMUNOPROTECTIVE INFLUENZA ANTIGEN AND ITS USE IN VACCINATION

| APPLN. TYPE | SMALL ENTITY | ISSUE FEE DUE | PUBLICATION FEE DUE | PREV. PAID ISSUE FEE | TOTAL FEE(S) DUE | DATE DUE |
|---|---|---|---|---|---|---|
| nonprovisional | YES | $755 | $0 | $0 | $755 | 03/01/2010 |

**THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.**

**THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.**

**HOW TO REPLY TO THIS NOTICE:**

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.**



PTOL-85 (Rev. 08/07) Approved for use through 08/31/2010.

# PART B - FEE(S) TRANSMITTAL

**Complete and send this form, together with applicable fee(s), to: Mail** **Mail Stop ISSUE FEE**
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**P.O. Box 1450**
**Alexandria, Virginia 22313-1450**
**or Fax (571)-273-2885**

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

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CHICAGO, IL 60606

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

**Certificate of Mailing or Transmission**

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

| |
|---|
| (Depositor's name) |
| (Signature) |
| (Date) |

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 09/498,046 | 02/04/2000 | Sabine Neirynck | VIB-08 | 8244 |

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|---|---|---|---|---|---|---|
| nonprovisional | YES | $755 | $0 | $0 | $755 | 03/01/2010 |

| EXAMINER | ART UNIT | CLASS-SUBCLASS |
|---|---|---|
| CHEN, STACY BROWN | 1648 | 424-192100 |

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

❑ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

❑ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list

(1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1_____

(2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2_____ 3_____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE (B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent) : ❑ Individual ❑ Corporation or other private group entity ❑ Government

4a. The following fee(s) are submitted:

❑ Issue Fee

❑ Publication Fee (No small entity discount permitted)

❑ Advance Order - # of Copies _____

4b. Payment of Fee(s): **(Please first reapply any previously paid issue fee shown above)**

❑ A check is enclosed.

❑ Payment by credit card. Form PTO-2038 is attached.

❑ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

5. **Change in Entity Status** (from status indicated above)

❑ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27.

❑ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature _____ Date _____

Typed or printed name _____ Registration No. _____

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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|---|---|
| CHEN, STACY BROWN | |
| ART UNIT | PAPER NUMBER |
| 1648 | |

DATE MAILED: 11/30/2009

**Determination of Patent Term Extension under 35 U.S.C. 154 (b)**
(application filed after June 7, 1995 but prior to May 29, 2000)

The Patent Term Extension is 0 day(s). Any patent to issue from the above-identified application will include an indication of the 0 day extension on the front page.

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Extension is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (http://pair.uspto.gov).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

| Notice of Allowability | Application No. | Applicant(s) | |
|---|---|---|---|
| | 09/498,046 | NEIRYNCK ET AL. | |
| | Examiner | Art Unit | |
| | Stacy B. Chen | 1648 | |

***-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--***

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to *8/12/09*.

2. ☒ The allowed claim(s) is/are *26,31,32,34,36-41,46,52-54,58,60 and 61*.

3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a) ☒ All b) ☐ Some* c) ☐ None of the:
      1. ☒ Certified copies of the priority documents have been received.
      2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
      3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

   * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE**.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
   (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
   (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

   **Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**

6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____ .
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

## EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Edward Gamson on November 20, 2009.

The application has been amended as follows:

IN THE CLAIMS:

Claims 55 and 56 have been cancelled.

Claims 26, 41, 46, 54 and 58 have been amended; see attached complete claim listing.

### *Examiner's Comment*

2. Claims 26, 41, 46, 54 and 58 were amended to clarify the claimed subject matter. Specifically, the amendment clarifies that the only M2 membrane protein component in the antigen of the fusion product is SEQ ID NO: 1, 2 or 3, or an immunogenic fragment thereof. In other words, the full-length M2 membrane protein is not present in the antigen of the fusion product. Claims 55 and 56 were cancelled as a result of the amendment to claim 26.

Applicant will file a new sequence listing to provide for the sequences in the drawings that are not identified by sequence identifiers, as well as an amendment to the specification to include the appropriate sequence identifiers.

***Conclusion***

3. Claims 26, 31, 32, 34, 36-41, 46, 52-54, 58, 60 and 61 are allowable.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stacy B. Chen whose telephone number is 571-272-0896. The examiner can normally be reached on M-F (7:00-4:30). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Mondesi can be reached on 571-272-0956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/Stacy B Chen/
Primary Examiner, Art Unit 1648

**Complete Claim Listing with Examiner's Amendment**

1. – 25. (Cancelled)

26. (Currently Amended) A human influenza immunogenic composition comprising a fusion product, said fusion product comprising

(i) an antigen comprising an immunogenic extracellular part of an M2 membrane protein of a human influenza A virus, wherein said extracellular immunogenic part consists of SEQ ID NOs: 1, 2 or 3, or an immunogenic fragment thereof that induces antibodies to human influenza A virus, and

(ii) a heterologous peptide or polypeptide presenting carrier that is selected from the group consisting of a hepatitis B core protein, C3d, polypeptides comprising multiple copies of C3d, and tetanus toxin fragment C.

27. – 30. (Cancelled)

31. (Previously Presented) The influenza immunogenic composition of claim 26, wherein the presenting carrier enhances the immunogenicity of the antigen.

32. (Previously Presented) The influenza immunogenic composition of claim 31, wherein the presenting carrier comprises an epitope recognized by an influenza-specific T helper cell or cytotoxic T cell.

33. (Cancelled)

34. (Previously Presented) The influenza immunogenic composition of claim 26, wherein the immunogenic composition comprises Lactococci cells expressing said fusion product in or on their cell membrane, and said cells optionally release said fusion product.

35. (Cancelled)

36. (Previously Presented) The influenza immunogenic composition of claim 26, wherein the fusion product is in an isolated form.

37. (Previously Presented) The influenza immunogenic composition of claim 26, wherein the fusion product is anchored in the membrane of an acceptor cell expressing the fusion product.

38. (Previously Presented) The influenza immunogenic composition of claim 26, wherein the fusion product is part of a lipid bilayer or cell wall.

39. (Previously Presented) The influenza immunogenic composition of claim 26, wherein the influenza immunogenic composition comprises Lactococci cells expressing the fusion product in or on their cell wall.

40. (Previously Presented) The influenza immunogenic composition of claim 26, further comprising an influenza antigen selected from the group consisting of hemagglutinin, neuraminidase, nucleoprotein and native M2.

41. (Currently Amended) A method of obtaining a human influenza immunogenic composition, comprising

providing a fusion product, said fusion product comprising

(i) an antigen comprising an immunogenic extracellular part of an M2 membrane protein of a human influenza A virus, wherein said extracellular immunogenic part consists of SEQ ID NOs: 1, 2 or 3, or an immunogenic fragment thereof that induces antibodies to human influenza A virus, and

(ii) a heterologous peptide or polypeptide presenting carrier that is selected from the group consisting of a hepatitis B core protein, C3d, polypeptides comprising multiple copies of C3d, and tetanus toxin fragment C; and

mixing it with an excipient.

42. – 45. (Cancelled)

46. (Currently Amended) A human influenza immunogenic composition obtained by the following steps:

providing a nucleic acid construct that encodes a fusion product, said fusion product comprising (i) an antigen comprising an immunogenic extracellular part of an M2 membrane protein of a human influenza A virus, wherein said extracellular immunogenic part consists of SEQ ID NOs: 1, 2 or 3, or an immunogenic fragment thereof that induces antibodies to human influenza A virus, and (ii) a heterologous peptide or polypeptide presenting carrier that is selected from the group consisting of a hepatitis B core protein, C3d, polypeptides comprising multiple copies of C3d, and tetanus toxin fragment C;

introducing the nucleic acid construct into an acceptor cell;

culturing the acceptor cell under conditions that allow expression of the fusion product;

optionally isolating the fusion product from the acceptor cell or its culture medium, and

optionally admixing the fusion product with an excipient,

thereby obtaining a human influenza vaccine comprising the fusion product.

47. – 51 (Cancelled)

52. (Previously Presented) The influenza immunogenic composition of claim 26, wherein the influenza immunogenic composition comprises a cytokine.

53. (Previously Presented) The influenza immunogenic composition of claim 26, wherein the influenza immunogenic composition comprises a vaccine adjuvant that is not Freund's adjuvant.

54. (Currently Amended) An influenza immunogenic composition for an animal species comprising a fusion product, said fusion product comprising

(i) an antigen comprising an immunogenic extracellular part of an M2 membrane protein of a human influenza A virus, wherein said extracellular immunogenic part consists of SEQ ID NOs: 1, 2 or 3, or an immunogenic fragment thereof that induces antibodies to human influenza A virus, and

(ii) a heterologous peptide or polypeptide presenting carrier that is selected from the group consisting of a hepatitis B core protein, C3d, polypeptides comprising multiple copies of C3d, and tetanus toxin fragment C.

55-57. (Cancelled)

58. (Currently Amended) A human influenza immunogenic composition comprising a fusion polypeptide, said fusion polypeptide comprising

(i) an antigen comprising an immunogenic extracellular part of an M2 membrane protein of a human influenza A virus, wherein said extracellular immunogenic part consists of SEQ ID NOs: 1, 2 or 3, or an immunogenic fragment thereof that induces antibodies to human influenza A virus, and

(ii) a heterologous peptide or polypeptide presenting carrier,

said fusion polypeptide being the expression product of a gene construct comprising a coding sequence for said immunogenic extracellular part of an M2 membrane

protein of a human influenza virus A of (i) linked to a coding sequence for said presenting carrier peptide or polypeptide of (ii).

59. (Cancelled)

60. (Previously Presented) The influenza immunogenic composition of claim 58, wherein said heterologous peptide or polypeptide presenting carrier is selected from the group consisting of a hepatitis B core protein, C3d, polypeptides comprising multiple copies of C3d, and tetanus toxin fragment C.

61. (Previously Presented) The influenza immunogenic composition of claim 60, wherein said heterologous peptide or polypeptide presenting carrier is the hepatitis B core protein.

/Stacy B Chen/
Primary Examiner, Art Unit 1648